

Date: 20070928

Docket: T-2174-05

Citation: 2007 FC 975

Ottawa, Ontario, the 28th day of September 2007

PRESENT: THE HONOURABLE MADAM JUSTICE TREMBLAY-LAMER

BETWEEN:

JEAN-PIERRE SAMSON

Plaintiff

and

THE MINISTER OF NATIONAL REVENUE

Defendant

REASONS FOR JUDGMENT AND JUDGMENT

[1] The case at bar is an appeal by trial *de novo* filed pursuant to section 135 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.) (the Act), from a notice of decision issued by the defendant on September 14, 2005, pursuant to section 131 of the Act.

[2] By that decision, the defendant found that the plaintiff had committed an offence under the Act, on the ground that the plaintiff had failed to comply with section 7.1 of the Act in not giving a customs officer true, accurate and complete information in response to two requests for information.

[3] Pursuant to the wording of section 131 of the Act, the Minister decided that the finding of non-compliance with subsection 109.1(1) of the Act, namely, failure to comply with section 7.1 of the Act, was validly made.

[4] That decision is the subject of the appeal at bar.

Facts admitted by parties

Imports by plaintiff

[5] On July 15, 2004, a customs officer, in the course of a routine examination of goods, intercepted a box bearing the notation “Educational Materials” in the Peace Bridge Brokers warehouse at the Pierre Elliot Trudeau International Airport.

[6] Examination of the contents of the box indicated that it was not educational materials, but rather stamps from various sources, accompanied by an invoice dated July 13, 2004, numbered 147120, in the amount of U.S. \$1,265.08, that was made out by “Kent Research Wholesale Postage Stamp” for “T.P.M. Enr.”.

[7] Also on July 15, the officer sent an information request (referred to administratively as “Y50”) to the importer (the plaintiff in this case) regarding this importation.

[8] By means of that request, the customs officer demanded that the plaintiff declare the goods imported correctly (by a written declaration) and provide proof of payment for the goods.

[9] Through his broker, the plaintiff then declared that the property had a value of U.S. \$340.58 and that it should be classified under tariff heading 49.0 in the List of Tariff Provisions in the Schedule to the *Customs Tariff* (the Tariff), as “printed books, brochures, leaflets and similar printed matter, whether or not in single sheets”. The plaintiff also provided an invoice in support of his declaration for U.S. \$340.58.

[10] Since the customs officer concluded that the description and value declared by the importer were not accurate, a second request for information was sent to the plaintiff’s broker, again giving him an opportunity to correct his declaration.

[11] At that time, the plaintiff amended his declaration to indicate that the goods should be classified under heading 9704 of the Tariff as “postage or revenue stamps, stamp-postmarks, first-day covers, postal stationery (stamped paper), and the like, used or unused, other than those of heading 49.07”, a tariff classification for which the tariff is the same as for tariff heading 49.01, namely, “free” in both cases.

[12] At the same time, the plaintiff responded to the customs officer’s request by providing the same invoice in the amount of U.S. \$340.58.

[13] Noting that this declaration was only partly accurate, a third request was sent to the plaintiff, telling him that the invoice provided did not correspond to the invoice found in the shipment and asking him to provide a true, accurate and complete declaration for the goods imported.

[14] The plaintiff then made an accurate declaration of the value of the property he wished to import and notified the customs officer that the value of the stamps was U.S. \$1,265.08, and included a new supporting invoice.

[15] At that point, the officer released the shipment since the plaintiff's declaration was accurate.

Notice of assessment of penalty against plaintiff

[16] The customs officer ruled that by not making a true, accurate and complete declaration in response to two requests for information, the plaintiff failed to comply with section 7.1 of the Act and so committed an offence under the Act.

[17] On September 5, 2004, the officer accordingly issued a notice of assessment of penalty (in accordance with administrative offence C-348) in the amount of \$2,000 against the plaintiff pursuant to section 109.1 of the Act.

[18] On September 15, 2004, the plaintiff sent the defendant a letter in which he asked that this decision be reviewed.

[19] On November 2, 2004, the defendant served on the plaintiff a notice of the reasons for action pursuant to the provisions of section 130 of the Act.

[20] On September 14, 2005, a decision was made pursuant to section 131 of the Act, finding that the plaintiff had committed an offence under the Act on the ground that he failed to comply with section 7.1 of the Act in not giving a customs officer true, accurate and complete information in response to two requests for information.

[21] The relevant provisions are set out in an appendix to these reasons.

Analysis

Did the plaintiff fail to comply with section 7.1 of the Act in giving a customs officer information that was not true and accurate?

[22] The plaintiff argues that he always acted in good faith and never intended to make a false declaration. In short, it was simply a misunderstanding due to the fact that a second package had been sent by the U.S. exporter at the same time.

[23] The plaintiff claims that he acted with diligence in the matter since he thought he had provided true and complete information on the package and had absolutely no intention of acting in any other way.

[24] The defendant argues that the defence of due diligence does not apply. In the defendant's opinion, the alleged offence is an absolute liability offence. What is more, even if it were a strict liability offence, which may give rise to a defence of due diligence, Mr. Samson did not meet his burden of proving due diligence.

[25] The appeal of the Minister's decision was heard by way of an ordinary action, as provided for in section 135 of the Act.

[26] Mr. Samson was the sole witness for the plaintiff. For his part, the defendant called the trainee customs officer who intercepted the package. The facts related by her were for the most part admitted by the parties, so there is no need for the Court to discuss her testimony further in disposing of the case at bar.

[27] However, Mr. Samson's testimony casts a different light on some of the facts admitted. It appeared from his testimony, which I found credible, that he acted in good faith and the Court accepts that he had no intention of making a false declaration.

[28] The plaintiff testified that there were two packages in transit between the exporter and importer, so that when he asked the exporter to fax him a copy of the invoice the exporter sent the invoice corresponding to another package, which was also in the hands of the postal services.

[29] Regarding the contents of the package, the plaintiff explained that the information he had provided was accurate but imprecise as to the nature of the package, which did not matter since stamps, like educational materials, were not subject to any particular customs tariff. Moreover, he acted promptly to provide a more accurate description following the second request for information (a fact admitted by the defendant).

[30] As to the exact value of the goods, it was not until July 29, when he received the second package from the U.S. importer, that he found that the invoice in it was the same as the one he had faxed to the customs officer. That same day he asked the exporter for an explanation. The latter sent him a second invoice on August 2. Mr. Samson then tried to contact his broker by telephone, without success. However, he admitted in cross-examination that he did not leave any telephone message or send any e-mail or fax on that day. It was not until August 5 that the fax was sent, after the broker had filed a declaration on August 3, 2004, indicating a value of \$430.00 for the package in question.

[31] By the parties' admission, there is no doubt that the amount declared was not accurate. On the one hand, the plaintiff argues that he can plead due diligence; on the other, the defendant submits that this is an absolute liability offence which does not allow of such a defence.

[32] In my opinion, the question of whether the plaintiff can or cannot plead due diligence does not have to be decided in the case at bar, since even if it can be pleaded, the plaintiff would have to establish that he took all reasonable steps to ensure that the information provided was accurate.

[33] Mr. Samson knew from July 29, 2004, that he had submitted inaccurate information, since the invoice in the second package was the same as that which he had sent for the first package.

[34] On August 2, after receiving the right invoice, and not succeeding in contacting the broker, he failed to send him an urgent message or to send an e-mail or fax to correct the confusion, which a diligent person would have done in the same situation. Mr. Samson preferred to take his day of leave and wait until August 5 to forward the information, unfortunately after the broker had already sent the inaccurate information.

[35] The burden of due diligence is a heavy one. It is not sufficient to plead forgetfulness or an error made in good faith. As my colleague Madam Justice Johanne Gauthier pointed out in *Cata International Inc. v. Canada (Minister of National Revenue, Customs, Excise and Taxation - M.N.R.)*, 2004 FC 663, at para. 22:

To begin with, it appears that the defendant misunderstands the nature of the due diligence defence. It will not suffice to plead forgetfulness or an error made in good faith. A party wishing to rely on the defence must establish that he or she has taken all reasonable steps to ensure that the declarations are accurate. This is a difficult burden to discharge, and so far every time such a defence has been used it has been unnecessary for the

Court to determine whether it applies, because the party using it was unable to establish due diligence.

[36] Mr. Samson was unable to meet the heavy burden imposed on him in putting forward such a defence, so it is not necessary for this Court to determine whether it applies.

[37] For these reasons, the appeal at bar is dismissed without costs.

ORDER

[38] **THE COURT ORDERS** that the appeal at bar be dismissed without costs.

“Danièle Tremblay-Lamer”

Judge

Certified true translation
Susan Deichert, Reviser

SCHEDULE A – CUSTOMS ACT, R.S.C. 1985, c. 1 (2ND SUPP.)

<p><i>PROVISION OF INFORMATION</i></p> <p><u>Obligation to provide accurate information</u></p> <p>7.1 Any information provided to an officer in the administration or enforcement of this Act, the <i>Customs Tariff</i> or the <i>Special Import Measures Act</i> or under any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods, shall be true, accurate and complete.</p> <p>2001, c. 25, s. 6.</p> <p><i>PENALTIES AND INTEREST</i></p> <p><u>Designated provisions</u></p> <p>109.1 (1) Every person who fails to comply with any provision of an Act or a regulation designated by the regulations made under subsection (3) is liable to a penalty of not more than twenty-five thousand dollars, as the Minister may direct.</p> <p><u>Notice of reasons for action</u></p> <p>130. (1) Where a decision of the Minister under section 131 is requested under section 129, the President shall forthwith serve on the person who requested the decision written notice of the reasons for the seizure, or for the notice served under section 109.3 or 124, in respect of which the decision is requested.</p>	<p><i>FOURNITURE DE RENSEIGNEMENTS</i></p> <p><u>Obligation de fournir des renseignements exacts</u></p> <p>7.1 Les renseignements fournis à un agent pour l'application et l'exécution de la présente loi, du <i>Tarif des douanes</i> ou de la <i>Loi sur les mesures spéciales d'importation</i>, ou sous le régime d'une autre loi fédérale prohibant, contrôlant ou réglementant l'importation ou l'exportation de marchandises doivent être véridiques, exacts et complets.</p> <p>2001, ch. 25, art. 6.</p> <p><i>PÉNALITÉS ET INTÉRÊTS</i></p> <p><u>Dispositions désignées</u></p> <p>109.1 (1) Est passible d'une pénalité maximale de vingt-cinq mille dollars fixée par le ministre quiconque omet de se conformer à une disposition d'une loi ou d'un règlement, désignée par un règlement pris en vertu du paragraphe (3).</p> <p><u>Signification du président</u></p> <p>130. (1) Le président signifie sans délai par écrit à la personne qui a présenté la demande visée à l'article 129 un avis des motifs de la saisie, ou des motifs de l'avis prévu aux articles 109.3 ou 124, à l'origine de la demande.</p>
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<p><u>Evidence</u></p> <p>(2) The person on whom a notice is served under subsection (1) may, within thirty days after the notice is served, furnish such evidence in the matter as he desires to furnish.</p> <p><u>Evidence</u></p> <p>(3) Evidence may be given under subsection (2) by affidavit made before any person authorized by an Act of Parliament or of the legislature of a province to administer oaths or take affidavits.</p> <p>R.S., 1985, c. 1 (2nd Supp.), s. 130; 1993, c. 25, s. 83; 1999, c. 17, s. 127; 2001, c. 25, s. 71; 2005, c. 38, s. 85.</p>	<p><u>Preuve</u></p> <p>(2) La personne visée au paragraphe (1) dispose de trente jours à compter de la signification de l'avis pour produire tous moyens de preuve à l'appui de ses prétentions.</p> <p><u>Affidavit</u></p> <p>(3) Les moyens de preuve visés au paragraphe (2) peuvent être produits par déclaration sous serment faite devant toute personne autorisée par une loi fédérale ou provinciale à faire prêter serment et à recevoir les déclarations sous serment.</p> <p>L.R. (1985), ch. 1 (2^e suppl.), art. 130; 1993, ch. 25, art. 83; 1999, ch. 17, art. 127; 2001, ch. 25, art. 71; 2005, ch. 38, art. 85.</p>
<p><u>Decision of the Minister</u></p> <p>131. (1) After the expiration of the thirty days referred to in subsection 130(2), the Minister shall, as soon as is reasonably possible having regard to the circumstances, consider and weigh the circumstances of the case and decide</p> <p>(a) in the case of goods or a conveyance seized or with respect to which a notice was served under section 124 on the ground that this Act or the regulations were contravened in respect of the goods or the conveyance, whether the Act or the regulations were so contravened;</p> <p>(b) in the case of a conveyance seized or in respect of which a notice was served under section 124 on the ground that it was made use of in respect of goods in respect of which this Act or the regulations were contravened, whether the conveyance was made use of in that way and whether the</p>	<p><u>Décision du ministre</u></p> <p>131. (1) Après l'expiration des trente jours visés au paragraphe 130(2), le ministre étudie, dans les meilleurs délais possible en l'espèce, les circonstances de l'affaire et décide si c'est valablement qu'a été retenu, selon le cas :</p> <p>a) le motif d'infraction à la présente loi ou à ses règlements pour justifier soit la saisie des marchandises ou des moyens de transport en cause, soit la signification à leur sujet de l'avis prévu à l'article 124;</p> <p>b) le motif d'utilisation des moyens de transport en cause dans le transport de marchandises ayant donné lieu à une infraction aux mêmes loi ou règlements, ou le motif de cette infraction, pour justifier soit la saisie de ces moyens de transport, soit la signification à leur sujet de l'avis prévu à l'article 124;</p> <p>c) le motif de non-conformité aux paragraphes 109.1(1) ou (2) ou à une</p>

<p>Act or the regulations were so contravened; or</p> <p>(c) in the case of a penalty assessed under section 109.3 against a person for failure to comply with subsection 109.1(1) or (2) or a provision that is designated under subsection 109.1(3), whether the person so failed to comply.</p> <p>(d) [Repealed, 2001, c. 25, s. 72]</p> <p><u>Exception</u></p> <p>(1.1) A person on whom a notice is served under section 130 may notify the Minister, in writing, that the person will not be furnishing evidence under that section and authorize the Minister to make a decision without delay in the matter.</p> <p><u>Notice of decision</u></p> <p>(2) The Minister shall, forthwith on making a decision under subsection (1), serve on the person who requested the decision a detailed written notice of the decision.</p> <p><u>Judicial review</u></p> <p>(3) The Minister's decision under subsection (1) is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by subsection 135(1).</p> <p>R.S., 1985, c. 1 (2nd Suppl.), s. 131; 1993, c. 25, s. 84; 2001, c. 25, s. 72.</p> <p><u>Federal Court</u></p> <p>135. (1) A person who requests a decision of the Minister under section 131 may, within</p>	<p>disposition désignée en vertu du paragraphe 109.1(3) pour justifier l'établissement d'une pénalité en vertu de l'article 109.3, peu importe s'il y a réellement eu non-conformité.</p> <p>d) [Abrogé, 2001, ch. 25, art. 72]</p> <p><u>Exception</u></p> <p>(1.1) La personne à qui a été signifié un avis visé à l'article 130 peut aviser par écrit le ministre qu'elle ne produira pas de moyens de preuve en application de cet article et autoriser le ministre à rendre sans délai une décision sur la question.</p> <p><u>Avis de la décision</u></p> <p>(2) Dès qu'il a rendu sa décision, le ministre en signifie par écrit un avis détaillé à la personne qui en a fait la demande.</p> <p><u>Recours judiciaire</u></p> <p>(3) La décision rendue par le ministre en vertu du paragraphe (1) n'est susceptible d'appel, de restriction, d'interdiction, d'annulation, de rejet ou de toute autre forme d'intervention que dans la mesure et selon les modalités prévues au paragraphe 135(1).</p> <p>L.R. (1985), ch. 1 (2^e suppl.), art. 131; 1993, ch. 25, art. 84; 2001, ch. 25, art. 72.</p> <p><u>Cour fédérale</u></p> <p>135. (1) Toute personne qui a demandé que soit rendue une décision en vertu de l'article 131 peut, dans les quatre-vingt-dix jours suivant la communication de cette décision, en appeler par voie d'action devant la Cour fédérale, à titre de demandeur, le ministre étant</p>
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<p>ninety days after being notified of the decision, appeal the decision by way of an action in the Federal Court in which that person is the plaintiff and the Minister is the defendant.</p> <p><u>Ordinary action</u></p> <p>(2) The <i>Federal Courts Act</i> and the rules made under that Act applicable to ordinary actions apply in respect of actions instituted under subsection (1) except as varied by special rules made in respect of such actions.</p> <p>R.S., 1985, c. 1 (2nd Suppl.), s. 135; 1990, c. 8, s. 49; 2002, c. 8, s. 134.</p>	<p>le défendeur.</p> <p><u>Action ordinaire</u></p> <p>(2) La <i>Loi sur les Cours fédérales</i> et les règles prises aux termes de cette loi applicables aux actions ordinaires s'appliquent aux actions intentées en vertu du paragraphe (1), sous réserve des adaptations occasionnées par les règles particulières à ces actions.</p> <p>L.R. (1985), ch. 1 (2^e suppl.), art. 135; 1990, ch. 8, art. 49; 2002, ch. 8, art. 134.</p>
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FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2174-05

STYLE OF CAUSE: JEAN-PIERRE SAMSON v. MINISTER OF NATIONAL REVENUE

PLACE OF HEARING: Québec, Quebec

DATE OF HEARING: September 18, 2007

REASONS FOR ORDER BY: The Honourable Madam Justice Tremblay-Lamer

DATED: September 28, 2007

APPEARANCES:

Pierre Fortin FOR THE PLAINTIFF

Benoît De Champlain FOR THE DEFENDANT

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